

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RICHARD WILDER)	
Claimant)	
VS.)	
)	Docket Nos. 1,001,649
)	& 1,004,830
CITY OF TOPEKA)	
Respondent,)	
Self-Insured)	

ORDER

Respondent appealed the October 15, 2002 preliminary hearing Order entered by Administrative Law Judge Brad E. Avery.

ISSUES

In Docket No. 1,001,649, claimant alleges injury to both knees in a series of mini-traumas and accidents through January 15, 2002. In Docket No. 1,004,830, claimant alleges an injury to his right knee in a series of mini-traumas through June 21, 2002, and two distinct accidents on June 21, 2002.

By the preliminary hearing Order entered October 15, 2002, Judge Avery ordered respondent to provide claimant with medical treatment from Dr. Joseph Mumford. The Judge specifically found that claimant injured his right knee on June 21, 2002, in an accident that arose out of and in the course of his employment. Respondent appealed the Judge's Order, requesting this Board to review three issues:

1. Did claimant sustain accidental injury arising out of and in the course of employment with respondent?
2. Did claimant's alleged work-related accidents accelerate the need for right knee replacement surgery?
3. Did the Judge err by ordering respondent to pay for treatment provided by Dr. Mumford, including right knee replacement?

In claimant's brief to the Board, claimant argues the evidence is uncontradicted that he injured his right knee on June 21, 2002, when jumping from a trailer to avoid a falling pipe. Claimant acknowledges that he had arthritis in the right knee before June 21, 2002, but argues that he aggravated the knee on that date to such an extent that he required knee replacement surgery. Accordingly, claimant requests the Board to affirm the October 15, 2002 Order.

Conversely, in its brief to the Board, respondent argues a knee replacement is not reasonable or necessary medical treatment for the June 21, 2002 incident. Accordingly, respondent argues the Judge lacked jurisdiction to order respondent to provide claimant with medical treatment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes the preliminary hearing Order should be affirmed.

Claimant is 55 years old and has worked for respondent since September 1985. For the last 10 years, claimant has operated equipment for respondent. Claimant weighs 320-325 pounds and has experienced bilateral knee problems for a number of years due to degenerative joint disease.

Before any of the alleged accidents involved in these claims, claimant had a left knee replacement and was experiencing symptoms in his right knee. Furthermore, Dr. Joseph Mumford had advised claimant that he would eventually need a right knee replacement. In fact, on December 18, 2001, claimant had seen Dr. Jeffrey Conrow for right knee complaints and the doctor recommended a right knee replacement.

On January 14, 2002, claimant twisted his right knee while hurrying to help a coworker from a ditch that was beginning to collapse. At the time of the incident, claimant heard his right knee pop and he felt severe pain. Claimant reported the incident to his foreman and the next day prepared an accident report.

On May 13, 2002, claimant saw Dr. Mumford for increasing right knee pain. The doctor offered to do the right knee replacement. According to Dr. Mumford, claimant agreed to have the surgery and they would select a mutually convenient date in the near future.

On June 21, 2002, claimant twisted and injured his right knee when he jumped out of the way of a large pipe that had fallen from a fork lift. Later in the day, claimant twisted his knee again when another pipe rolled off the fork lift. Within minutes of the second

incident, claimant advised his supervisor he was going to the hospital emergency room. Claimant then sought medical treatment for the pain and swelling in his right knee.

The Board concludes claimant injured his right knee in the June 21, 2002 incidents. As a result of those accidents, claimant's right knee symptoms were aggravated. Consequently, claimant is entitled to medical benefits for the June 21, 2002 accidents and resulting right knee injury.

Respondent requests the Board to address the issue whether respondent is required to pay for treatment for a right knee replacement. Although the Judge did not specifically order or authorize that treatment, it is likely that Dr. Mumford will perform a right knee replacement. The issue whether respondent should be required to pay for that treatment, however, is not properly before the Board at this time. A preliminary hearing finding of whether certain medical treatment is reasonably necessary or of whether certain medical treatment is related to a compensable injury is not a finding that may be reviewed from a preliminary hearing order. See K.S.A. 44-534a, which generally limits the Board's review of preliminary hearing findings to those issues directly related to the compensability of a claim.

The respondent, however, is not without relief. The Workers Compensation Act provides that preliminary hearing findings are not final but, instead, subject to modification upon a full presentation of the facts.¹ The respondent may reserve these medical issues for purposes of the final award and any subsequent appeals.

WHEREFORE, the Board affirms the October 15, 2002 preliminary hearing Order entered by Judge Avery.

IT IS SO ORDERED.

Dated this ____ day of December 2002.

BOARD MEMBER

c: John J. Bryan, Attorney for Claimant
Larry G. Karns, Attorney for Respondent
Brad E. Avery, Administrative Law Judge
Director, Division of Workers Compensation

¹ K.S.A. 44-534a(a)(2).